SIDLEY AUSTIN BROWN & WOOD LLP
A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

CHICAGO
DALLAS
LOS ANGELES
NEW YORK
SAN FRANCISCO
SEATTLE

1501 K STREET, N.W.
WASHINGTON, D.C. 20005
TELEPHONE 202 736 8000
FACSIMILE 202 736 8711
www.sidley.com
FOUNDED 1866

BEIJING
HONG KONG
LONDON
SHANGHAI
SINGAPORE
TOKYO

WRITER'S DIRECT NUMBER
(202) 736-8218

WRITER'S E-MAIL ADDRESS
pandros@sidley.com

DOCKET FILE COPY ORIGINAL

RECEIVED
JAN 14 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

January 14, 2002

Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

REDACTED – FOR PUBLIC INSPECTION

Re: *Application by Verizon New Jersey Inc. et al. to Provide In-Region InterLATA Services in New Jersey*
CC Docket No. 01-347

Dear Ms. Salas:

Enclosed for filing please find the Comments of AT&T Corp. ("AT&T") in connection with the above referenced matter. Pursuant to the Public Notice issued December 20, 2001, AT&T is submitting the original and four (4) copies of its comments and supporting exhibits in redacted form.

AT&T is also submitting under seal the portions of its comments that contain material designated as confidential pursuant to the Protective Order in this matter. These pages bear a legend indicating that they are confidential.

Please let me know if any additional information is required. Thank you.

Very truly yours,

Peter M. Andros
Legal Assistant

Encl.

No. of Copies rec'd 0+4
List ABCDE

ORIGINAL

Before the
Federal Communications Commission
Washington, DC 20554

RECEIVED
JAN 14 2002
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of	)	
	)	
Application of Verizon New Jersey, Inc.,	)	
BellAtlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	CC Docket No. 01-347
Distance Company (d/b/a/ Verizon Enterprise	)	
Solutions), Verizon Global Networks, Inc., and	)	
Verizon Select Services, Inc., for	)	
Authorization to Provide In-Region InterLata	)	
Services in New Jersey	)	

COMMENTS OF AT&T CORP.

Mark E. Haddad
David L. Lawson
R. Merinda Wilson
Ronald S. Flagg
Richard E. Young
SIDLEY AUSTIN BROWN & WOOD, L.L.P.
1501 K St., N.W.
Washington, D.C. 20005
(202) 736-8000

Mark C. Rosenblum
Richard Rubin
James Talbot
Lawrence Lafaro
Frederick C. Pappalardo
AT&T CORP.
295 Basking Ridge, NJ
(908) 221-4481

Attorneys for AT&T Corp.

January 14, 2001

ORIGINAL

TABLE OF CONTENTS

FCC ORDERS CITED

SHORT CITE	FULL CITE
Connecticut 271 Order	Memorandum Opinion and Order, *Application of Verizon New York, Inc. et al., for Authorization to Provide In-Region InterLATA Services in Connecticut*, CC Dkt. No. 01-100 (rel. July 20, 2001)
KS/OK 271 Order	Memorandum Opinion and Order, *Joint Application of SBC Communications, Inc., et al, for Provision of In-Region InterLATA Services in Kansas and Oklahoma*, 16 FCC Rcd. 6237 (2001)
Massachusetts 271 Order	Memorandum Opinion and Order, *Application of Verizon New England Inc. (d/b/a Verizon Long Distance) et al For Authorization to Provide In-Region InterLATA Services in Massachusetts*, 16 FCC Rcd. 8988 (2001)
Michigan 271Order	Memorandum Opinion and Order, *Application of Ameritech Michigan Pursuant to Section 271 to Provide In-Region, InterLATA Services in Michigan*, 12 FCC Rcd. 20543 (1997)
NY 271 Order	Memorandum Opinion and Order, *Application by Bell Atlantic New York for Authorization Under Section 271 of the Communications Act To Provide In-Region, InterLATA Service in the State of New York*, 15 FCC Rcd. 3953 (1999)
Pennsylvania 271 Order	Memorandum Opinion and Order, *Application of Verizon Pennsylvania Inc. et al. for Authorization to Provide In-Region, InterLATA Services in Pennsylvania*, CC Docket No. 01-138 (rel. Sept. 19, 2001)
Texas 271 Order	Memorandum Opinion and Order, *Application by SBC Communications Inc., et al Pursuant to Section 271 of the Telecommunications Act of 1996 to Provide In-Region, InterLATA Services in Texas*, 15 FCC Rcd. 18354 (2000)

APPENDIX TO COMMENTS OF AT&T CORP. IN OPPOSITION TO VERIZON's SECTION 271 APPLICATION FOR NEW JERSEY

CC Docket No. 01-347

EX.	DECLARANT	SUBJECT(S) COVERED
A	Stephen G. Huels	Pricing
B	John Sczepanski	Pricing
C	Kirchberger/Nurse/Kamal	OSS
D	Bloss/Nurse	Performance Measures

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of	)	
	)	
Application of Verizon New Jersey, Inc.,	)	
BellAtlantic Communications, Inc. (d/b/a	)	
Verizon Long Distance), NYNEX Long	)	CC Docket No. 01-347
Distance Company (d/b/a/ Verizon Enterprise	)	
Solutions), Verizon Global Networks, Inc., and	)	
Verizon Select Services, Inc., for	)	
Authorization to Provide In-Region InterLata	)	
Services in New Jersey	)	

COMMENTS OF AT&T CORP.

Pursuant to the Commission's Public Notice, AT&T Corp. ("AT&T") respectfully submits these comments in opposition to the application of Verizon for authorization to provide in-region, interLATA services in New Jersey.

INTRODUCTION AND SUMMARY

In the six years since the Telecommunications Act of 1996 was enacted, over 90 carriers have received certification from the New Jersey Board of Public Utilities (New Jersey BPU) to provide local exchange service in New Jersey. This interest among potential competitors is not surprising. New Jersey is the most densely populated state, and one of the largest and wealthiest states, in Verizon's territory. To date, however, not a single competitor has succeeded in offering New Jersey customers a meaningful competitive alternative to Verizon, particularly in the residential market. Despite the numerous market-opening obligations imposed upon incumbent LECs by the 1996 Act and this Commission's rules, Verizon that has succeeded in blocking any significant competitive entry into New Jersey.

The absence of local competition is stark. Verizon remains the local carrier for over 98 percent of all New Jersey residents, with resellers serving nearly all of the remaining customers (and attracting few new customers). Verizon's data show, for example, that of the 4.4 million residential lines in New Jersey, only 800 are served through UNEs, and only *** *** are served by a facilities-based competitor. Thus, using the only two paths of local entry with the potential of providing sustainable, mass-market local competition, competitors have managed to capture *less than* *** *** of the available residential access lines. By any standard, this negligible market share is extraordinary.

Pennsylvania, a neighboring state and Verizon's most recent, successful application, provides an apt comparison. The New Jersey local exchange market should be no less an attractive a market for potential competitors than Pennsylvania. Yet the *** *** residential access lines served by either UNE or facilities-based competitors in New Jersey today pales in comparison with the 292,000 residential UNE-P and facilities-based lines that competitors had captured in Pennsylvania by July 2001, when Verizon submitted its 271 application for that jurisdiction. Irreversible local competition simply has not arrived in New Jersey. Indeed, no 271 application has been granted on so competitively weak a foundation.

The failure of local competition to emerge in New Jersey is directly traceable to Verizon's resistance to implement fully its checklist obligations. Through years of relentless litigation challenging crucial aspects of its market-opening obligations, Verizon has effectively denied CLECs access to essential elements of its network. Until November 2001, Verizon's non-TELRIC UNE rates were so high as to preclude on their face any UNE-based residential entry into New Jersey. Even now, after long-overdue reductions in many recurring UNE rates, Verizon imposes a prohibitively high non-recurring charge for hot cuts – over 5 times higher than its existing rate, and 40 times higher than the rate in Pennsylvania – that not only violates TELRIC but serves independently to preclude facilities-based entry using UNE loops. And other UNE rates, including Verizon's recurring switching rates, remain too high to permit broad-based competition for residential customers through use of the UNE-platform.

Verizon's excessive UNE rates are not the only obstacle to effective local competition. For example, Verizon has yet to demonstrate, through either third-party testing or commercial experience, that the hub of its operations support systems – a service order processor unique to New Jersey – can support high-volume, UNE-based entry. Indeed, all available evidence suggests it cannot, for even at the microscopically small order levels to date, Verizon's OSS performance is far worse than what Verizon provides CLECs in Pennsylvania, New York, or Massachusetts, let alone what it provides itself. And Verizon's refusal to commit to performance measures or to a performance assurance plan comparable to what it provides CLECs in New York, as well as its refusal to provide competitors with nondiscriminatory access to interconnection consistent with the Act and the Commission's rules, create additional and significant barriers to entry that further protect Verizon from any meaningful competitive challenge.

As a result, no competitor has entered – or currently plans to enter – the market for residential local exchange service in New Jersey on anything approaching a competitively significant scale. The unlawful terms and conditions on which Verizon now offers access to its network preclude such competition. Verizon's New Jersey application thus conflicts not only with the requirement of full checklist implementation, but with the Commission's obligation to ensure that any grant of interLATA authorization is in the public interest. Granting this application at this time would install Verizon as the only carrier able to offer all customers in its territory one-stop shopping for local and long distance service. With that powerful and unique advantage, Verizon would quickly extend its local monopoly to the long distance market, and then face little if any competitive constraints on its ability to raise prices. The Commission should therefore deny Verizon's New Jersey application.

The balance of these comments is organized as follows. Part I addresses the pricing constraints that have long prevented, and continue to prevent, meaningful local competition in New Jersey. In particular, this part summarizes Verizon's long and successful opposition to establishing TELRIC-compliant UNE rates, thereby effectively forestalling competitors from even developing, let alone implementing, any entry plan that required use of UNEs. This part also addresses the two principal ways in which Verizon's UNE rates continue to block competition, specifically, the exorbitant non-recurring charges for hot cuts, and the excessive recurring rates for unbundled switching.

Part II addresses Verizon's failure to provide competitors with nondiscriminatory access to its operations support systems. This part describes the key role played by one particular back-end system – the service order processor – that is unique to Verizon's New Jersey operations. This processor is not used to process orders in Pennsylvania, New York, or other Verizon states, it was not subjected to end-to-end volume testing by KPMG, and it has not yet been used to any commercially significant extent by competitors. Yet the accuracy of Verizon's provisioning and billing for CLEC orders is critically dependent on the service order processor. There is simply no evidence to suggest that Verizon's systems are capable today of provisioning large volumes of CLEC UNE orders, were CLECs otherwise in a position (*e.g.*, through changes in Verizon's UNE rates) to submit them.

To the contrary, there is additional strong evidence that Verizon's New Jersey systems are not up to the task. Even at the exceptionally low order volumes that prevail in New Jersey, Verizon has proven itself incapable of providing CLECs with performance comparable to that it routinely provides CLECS, who submit higher order volumes, in Pennsylvania, New York, and other states. That CLECs need access to electronic order-processing comparable to what the incumbent LEC enjoys has been a bedrock requirement since the Commission first addressed the issue nearly five years ago. Yet in New Jersey today, more than half of the UNE orders that CLECs submit in New Jersey still fall out for manual processing. Thus, as recently as November 2001, while Verizon managed to flow through 81 percent of its UNE orders electronically in Pennsylvania, it was able to give equivalent treatment to only 48 percent of its UNE orders in New Jersey. In none of the States for which Verizon previously received 271 approval did its OSS render such abysmal electronic processing performance, and rightly so, for such discriminatory access cannot support broad-scale competitive entry. Other aspects of Verizon's OSS performance, such as its unusually high rejection rates for UNE orders, and its inability to prepare CLEC bills with the same accuracy as it prepares its own, further confirm that Verizon's application is premature.

Part III addresses the flaws in Verizon's performance measurements and performance assurance plan. Verizon, for example, has no incentive (other than the carrot of interLATA authorization) to improve its flow-through rate by increasing the types of orders that can flow through, because – unlike in New York and Massachusetts – Verizon will pay no penalties in New Jersey if its total flow-through rate for CLECs is woefully inadequate. Verizon has further reduced any incentive it might otherwise have to comply with its performance obligations by designing a unique exceptions process that allows Verizon unilaterally to excuse any discriminatory OSS performance as a "waiver," and places upon CLECs the burden of coming forward to prove – in open-ended administrative proceedings – that Verizon is not entitled to its claimed exception. That process – wholly unlike the New York plan – is inimical to competition, and promises to perpetuate the very entry-barring litigation that Verizon has used so successfully to block competitive entry in New Jersey.

Part IV explains why Verizon fails to provide access to interconnection in accordance with the Act and the Commission's rules. While Verizon purports to offer competitive LECs a single physical point of interconnection per LATA for operational purposes, it takes away the very benefit of such interconnection by insisting on multiple points of interconnection per LATA for billing purposes. This policy violates the Commission's existing rules for reciprocal compensation. Unless and until the Commission changes those rules – which it has not yet done and should not do – Verizon cannot be found to have fully implemented the competitive checklist until it complies with them.

Finally, Part V explains why, apart from the foregoing checklist violations, Verizon's New Jersey application cannot be found to advance the public interest. The core purpose of the Act is to establish competition in the local exchange market; to permit a BOC to offer long distance before such competition has firmly taken root is a recipe for remonopolization of the long distance market as well as indefinite extension of the local monopoly. No 271 application has presented so stark a contrast between a state with demographic and economic attributes that should support a vibrantly competitive local market, and a level of UNE-based and facilities-based competition that is less than one percent of what had been achieved in adjacent, comparably attractive states. The Commission need not adopt any litmus test or "minimum market share" requirement to determine that the shrinking resale and non-existent UNE and facilities-based residential competitive market in New Jersey is fundamentally incompatible with achievement of the Act's pro-competitive, monopoly-ending goals. The Commission should therefore insist that Verizon take the steps necessary to ensure that competition through all three paths of entry can take permanent root in New Jersey before granting Verizon's 271 application.

I. VERIZON FAILURE TO PROVIDE UNBUNDLED NETWORK ELEMENTS AT COST-BASED RATES HAS BLOCKED COMPETITION IN NEW JERSEY.

There is presently no meaningful local competition for residential customers in New Jersey. Although CLECs have established interconnection agreements with Verizon and participated in negotiations, arbitrations, and other proceedings designed to open Verizon's market to competition, and although some have found a way to offer local services to a limited number of business customers, none has succeeded in offering local service broadly to residential consumers. Verizon's data show that only ***   *** out of 4.4 million residential lines in New Jersey are served by a facilities-based competitor, and that only 800 out of the 4.4 million residential lines in New Jersey are served through UNEs. *See* Table 2, *infra*. These low local penetration rates compare miserably to those of other Verizon states. For example, when Verizon sought section 271 approval in Pennsylvania, CLECs served 292,000 residential UNE-P and facilities-based lines in Pennsylvania.[1] *See id.*

The low CLEC penetration rates in New Jersey are not attributable to a lack of interest on the part of the 90-some certificated CLECs to provide local telephone services. To the contrary, the demographic characteristics of New Jersey, a wealthy and densely populated

[1] Likewise, at the time of the New York and Massachusetts section 271 applications, CLECs served 173,095 and 88,050 residential UNE-P and facilities-based lines in each of those states respectively. *See id.*

state, make it a prime candidate for profitable CLEC entry. Nevertheless, it remains true that "efficient competitive entry into the local market is vitally dependent upon appropriate pricing." *Michigan 271 Order* ¶ 281. As explained below, the dearth of local competition in New Jersey results directly from Verizon's competition-foreclosing UNE rates. Those rates alone have long precluded any meaningful competitive UNE-based entry and – even after the long-overdue reductions in November 2001 – still serve to bar competition.

A. Verizon's UNE Rates Have Long Precluded CLEC Entry.

Verizon's New Jersey UNE rates, as adopted by the New Jersey Board of Public Utilities ("NJBPU") in 1997 and kept in place until just weeks before the filing of this application, were far higher than any reasonable application of TELRIC principles would have produced. Broad-based competitive entry into New Jersey was, by any measure, simply economically infeasible under these UNE rates.

The establishment of such anticompetitive UNE rates was not a fluke. It was a result that Verizon worked hard from the outset to achieve, and then strove mightily, for years, to maintain. AT&T filed a petition for arbitration with the NJBPU on July 15, 1996. Hearings were held in September and October of 1996, and both AT&T and Verizon presented witnesses and introduced extensive documentation relating to AT&T's cost model (Verizon chose not to present the arbitrator with its own cost model). The transcript of that proceeding is 3,600 pages, and parties submitted post-hearing briefs totaling more than 250 pages. On November 8, 1996, the arbitrator rendered his written judgment, resolving each of the outstanding issues based on the extensive record developed during the course of the arbitration.

Notwithstanding this enormous effort to establish cost-based rates, Verizon refused to comply with the arbitration results. On November 19, 1996, Verizon moved to have the NJBPU overturn the arbitrator's decision as it pertained to rates, and to substitute the results of a "generic" proceeding to be conducted by the NJBPU. The NJBPU had previously stated that "[t]he generally available terms and conditions that result from the generic proceeding will *not* supercede arbitrated terms and conditions." Order, Docket No.TX95120631, at 2 (June 20, 1996). Nevertheless, the NJBPU issued generic rates on December 2, 1997 and deemed them binding on AT&T. The arbitrated rates never took effect. The NJBPU-approved generic rates exceeded not only the rates established by the arbitrator for AT&T and Verizon, but even the rates that *Verizon itself had proposed in the arbitration*.

On January 12, 1998, AT&T filed an Amended Complaint in the U.S. District Court for the District of New Jersey challenging the generic rates and the NJBPU's application of those rates to AT&T. In its June 6, 2000 Order, the district court agreed that the NJBPU's generic rates were neither TELRIC-compliant nor the product of reasoned decisionmaking. June 6, 2000 Order at 27-30. The district court reversed and remanded the generic rates, finding error in both the recurring and nonrecurring rates approved by the NJBPU.

Verizon took no action to reduce its vastly overstated UNE rates in the wake of the district court's decision. Rather, when the NJBPU opened a new rate proceeding in June 2000 the unlawful, competition-foreclosing generic rates remained in effect. Not until November 20, 2001 – barely a month before Verizon filed its Section 271 Application – did the NJBPU issue a new Order adopting new interconnection and UNE rates for Verizon in New Jersey. The NJBPU did so in a summary order that is largely devoid of reasoning and still has not issued a final UNE rate order.

Although the recent order made substantial and much-needed reductions in many UNE rates, Verizon succeeded in maintaining – and in one important case, greatly increasing – key rates. As a result, Verizon's UNE rates continue to foreclose mass-market UNE-based entry. This is now most obvious with respect to facilities-based UNE-loop entry, the entry vehicle that AT&T and others had hoped to use to finally bring choice to Verizon's captive New Jersey residential and small and medium-sized business customers.

Verizon has effectively closed the door on that entry strategy with its new, massively inflated non-recurring charges ("NRCs") for hot cuts.[2] These NRCs are far to high to support facilities-based local entry in New Jersey; indeed, some CLECs have already informed the NJBPU that they cannot continue with their current plans to provide facilities-based services in New Jersey under Verizon's the current hot cut NRCs.

Nor can the newly-reduced recurring charges be expected to spur meaningful UNE-P based competition for residential customers, because Verizon's newly adopted switching rates remain far too high and well above the levels that any reasonable application of TELRIC would produce. Given these serious and continuing TELRIC problems with Verizon's rates, its Application must be denied.

---

[2] The Commission has long recognized that regardless of how closely an incumbent LEC's recurring charges are held to efficient forward-looking costs, an incumbent LEC can and will evade competition if it is allowed to increases potential competitor's costs significantly through non-recurring charges. *See, e.g., AT&T Communications,* 103 FCC 2d 277, ¶ 37 (1985) ("It is evident that nonrecurring charges can be used as an anticompetitive weapon to . . . discourage competitors"); Second Memorandum Opinion and Order on Reconsideration, *Expanded Interconnection with Local Telephone Company Facilities,* 8 FCC Rcd. 7341, ¶ 43 (1993) ("absent even-handed treatment, nonrecurring reconfiguration charges could constitute a serious barrier to competitive entry").

B. Verizon's Non-Recurring Hot Cut Charges Are Still Vastly Overstated And Foreclose UNE-Loop Entry In New Jersey.

A critical component of AT&T's local plan in New Jersey is the provision of residential and business local services using AT&T's own facilities collocated in Verizon's central offices, purchasing only the unbundled loop ("UNE-L") from Verizon. *See* Sczepanski Decl. ¶ 4; Huels Declaration ¶¶ 5-6. To execute that plan, AT&T must install switching and other equipment necessary to provide its local services, and obtain collocation space in Verizon central offices.

Pursuant to this facilities-based approach, every time a CLEC wins a Verizon residential or business customer, the loop serving that customer must be physically disconnected from Verizon's switching equipment and re-connected to the CLEC's switching equipment that is collocated in Verizon's central office. *See* Sczepanski Decl. ¶ 6; Huels Declaration ¶ 7. That process is called a "hot cut."[3] *See id.*

Verizon charges AT&T and other CLECs a fixed up-front NRC for performing hot cuts. Verizon's hot cut charges have always been too high, historically ranging from \$4.07/line in Pennsylvania to \$32.16/line in New Jersey, Sczepanski Decl., Table 1; Huels Decl. ¶ 8, as compared to an efficient TELRIC cost of less than three dollars per line.[4] Verizon's newly adopted New Jersey initial hot cut NRC is, however, truly extraordinary. For every residential or business customer that a CLEC wins from Verizon, the CLEC must pay Verizon

---

[3] Verizon charges different hot cut NRCs for two wire hot cuts without a premises visit (\$159.76) and with a premises visit (\$233.12).

[4] *See* Initial Post Hearing Brief of AT&T Communications of New Jersey, L.P., Before the State of New Jersey Board of Public Utilities, *In the Matter of Review of Unbundled Network Elements Rates Terms and Conditions of BA-NJ,* Docket No. TO00060356, Exhibit 54 (Walsh Testimony),

$159.76 to have that customer's line physically transferred so that it terminates at AT&T's facilities (or more than $230 if the hot cut requires a customer premises visit).[5] This absurdly high charge exceeds Verizon's charge for the same activity in other states by as much as 1,000 percent or more (Verizon's per line initial hot cut NRCs without a premises visit in Pennsylvania, Maryland, Virginia and Delaware, for example, are $4.07, $16.22, $13.49, and $22.52, respectively, *see* Sczepanski Decl., Table 1).

There is no question that Verizon's New Jersey hot cut NRC of $159.76 is not even remotely close to being TELRIC-compliant. As demonstrated by AT&T in the most recent NJBPU UNE rate proceeding, a TELRIC-compliant initial hot cut NRC without a premises visit in New Jersey would be $2.77.[6] Although the NJBPU did not ultimately adopt AT&T's proposed rate, the NJBPU agreed with the basic principles identified by AT&T for computing TELRIC-compliant hot cut NRCs. In particular, the NJBPU recognized that there should be very little manual processing of hot-cut orders and that the times to complete the activity should be very short. *See* Summary Order at 8 (recognizing that times associated with working with frame or RCC should be five minutes or less, that there should not be field installation charges associated with migration orders, and that the cost study should reflect 60 percent integrated digital loop carrier). Nonetheless the magnitude of Verizon's New Jersey hot cut NRC confirms that it is bloated with far too much manual processing and inefficiency.

---

at Exhibit RJW 6 (filed June 18, 2001) (Walsh testimony refers to "hot cuts" as "migration") (attached hereto as Attachment 1).

[5] If the hot cut requires a visit to the customer's premises, the hot cut NRC is $233.12.

[6] *See* n.4, *supra.*

A comparison of Verizon's two wire initial installation NRC to its two wire initial hot cut NRC without a premises visit illustrates this point. Both services require Verizon to install a two wire loop. The only measurable difference between a two wire installation and a two wire hot cut is that a two wire hot cut, in addition to installation, also requires Verizon to disconnect the loop from its own switching equipment within a specified time frame. Yet Verizon's two wire hot cut NRC is $130.30 more than its two wire installation NRC. The forward-looking cost of a two wire disconnect cannot possibly be *five times* higher than the cost of the installing that wire.

Verizon's massively inflated hot cut NRCs are more than a hypothetical costing issue. Verizon's overstated hot cut NRCs threaten any facilities-based local business and residential entry plans in New Jersey. As noted above, AT&T planned to provide residential and small to medium sized business services in New Jersey using its own facilities collocated in Verizon central offices, purchasing only the UNE-L from the BOC. Specifically, AT&T planned to migrate its small to medium sized business UNE-P customers to a new facilities-based UNE-L service. *See* Sczepanski Decl. ¶ 4. And, although AT&T currently does not have a residential local telephone offering in New Jersey, AT&T planned to enter New Jersey later this year with a facilities-based bundled local voice/data service. *See* Huels Decl. Decl. ¶¶ 5-6. For every customer that AT&T adds to its new facilities-based service, AT&T will require a hot cut. *See* Sczepanski Decl. ¶ 6; Huels Decl. ¶ 7.

Verizon's bloated New Jersey hot cut NRCs create a classic price squeeze that will require AT&T to re-evaluate whether it is still economically feasible for AT&T to go forward with its facilities-based residential and business local entry plans in New Jersey. AT&T obviously could not hope to attract many customers if it attempted to pass on to consumers

Verizon's exorbitant hot cut charge. Nor can AT&T afford to absorb the massive hot cut NRC increases. As explained in the attached declaration of the manager in charge of AT&T's deployment of UNE-L based residential service offering in New Jersey, AT&T's internal analysis shows that, based on Verizon's new $159.73/line New Jersey hot cut NRC, the time it would take AT&T to recover its up-front costs and investment would be extended beyond its expected customer retention period. *See* Huels Decl. ¶ 9. The same problem arises for AT&T's small and medium sized business offering. *See* Sczepanski ¶¶ 9-10. Thus, given Verizon's overstated hot cut NRCs, AT&T must consider whether to delay or even cancel its existing New Jersey residential and business local entry plans. *See* Sczepanski Decl. ¶¶ 9-10; Huels Decl. ¶ 9.

Verizon's overstated hot cut NRCs preclude facilities-based local entry in New Jersey. Consequently, the dearth of local facilities-and UNE-based competition in New Jersey is likely to continue unless Verizon's hot cut NRCs are substantially reduced. In fact, in addition to AT&T, other CLECs have already filed statements with the NJBPU stating that they will have to terminate their residential business plans in New Jersey unless the hot cut NRC is reduced.[7] And as the Commission has warned, Section 271 "embodies a congressional determination that . . . local telecommunications markets must *first* be open to competition so that a BOC cannot use its control over bottleneck local exchange facilities to undermine competition in the long distance market." *Michigan 271 Order* ¶ 388 (emphasis added). Thus, Verizon's Application must be denied.

[7] *See, e.g.*, Letter from Martin W. Clift, Jr., Cavalier Telephone, to NJBPU (dated December 28, 2001 (stating that if Verizon's New Jersey hot cut NRCs are implemented "Cavalier will be forced to discontinue its New Jersey operations"); Letter from Howard Schwartz, Conversent Telecommunications, to Henry Ogden, Secretary NJBPU (dated January 9, 2002) (stating that "[i]f adopted, [Verizon's New Jersey hot cut NRCs] will seriously impair Conversent's ability to service small business customers in New Jersey") (Attached hereto as Attachment 2).

C. Verizon's Local Recurring Switching Rates Also Remain Above TELRIC Levels.

Verizon's New Jersey recurring switching rates are also based on non-TELRIC assumptions that substantially overstate those rates. As one example, Verizon's cost model purports to convert vertical feature costs – *e.g.*, costs for caller ID and call forwarding – into per minute costs and adds those costs to its switching rate. As demonstrated by AT&T, however, it is inappropriate to simply add cost for vertical features to switch usage costs because most of the costs of vertical features are already included in the port cost.[8] As a result of these and other non-TELRIC assumptions, Verizon's New Jersey switching rates are substantially overstated, as the New York recommended decision rates confirm.

Predictably, Verizon avoids making comparisons of its rates to the recommended rates pending before the New York Commission. Instead, Verizon argues that its recurring rates are entitled to a "presumption of compliance" because they are within some reasonable range of the rates currently in effect in New York. *Verizon Br.* at 96. Verizon cites to the Massachusetts, Connecticut and Pennsylvania orders in support of that proposition. *See id.* Verizon entirely ignores, however, the Commission's follow-up statement that "[i]f the New York Commission adopts modified UNE rates, future section 271 applicants could no longer demonstrate TELRIC compliance by showing that their rates . . . are equivalent to or based on the [former] New York rates." *Massachusetts 271 Order* ¶ 29. And that is the case here.

---

[8] *See* Rebuttal Testimony of Michael R. Baranowski on Behalf of AT&T Communications of New Jersey, L.P., Before the State of New Jersey Board of Public Utilities, *In the Matter of Review of Unbundled Network Elements Rates Terms and Conditions of BA-NJ,* Docket No. TO00060356, at 18 (filed October 12, 2000) (attached hereto as Attachment 3).

In fact, there is currently a set of new recommended rates pending before the New York Commission, and the New York Commission is expected to act on that recommendation shortly. Verizon, therefore, cannot reasonably rely on New York's current rates to justify its New Jersey rates. Indeed, the Commission has explained in its *Massachusetts 271 Order* (¶ 30) that "a decision by the New York Commission to modify [its switching] rates may undermine Verizon's reliance on those rates." Therefore, to the extent that an intrastate comparison of Verizon's New Jersey switching rates would be appropriate at all, that comparison must be made to New York's pending recommended rates.[9]

II. VERIZON DOES NOT PROVIDE NONDISCRIMINATORY ACCESS TO ITS OPERATIONS SUPPORT SYSTEMS

Verizon's Application suggests that the issue of whether it is providing nondiscriminatory access to its operations support systems ("OSS") is all but settled, arguing that its OSS are "in place, operational, fully tested, and already handling commercial volumes." Verizon Br. at 57. In fact, Verizon asserts that the similarity of its OSS in New Jersey to those in States in the Verizon region where Section 271 authority has already been granted "establishes a presumption" that Verizon is in compliance with its OSS obligations. *See id.* at 14-15.

Verizon's arguments, including its reliance on the OSS in other States in its region, misstate the case. Both Section 271 and the Commission's prior decisions regarding Section 271 make clear that Verizon must show that *in New Jersey* it is providing parity of access to its OSS. The Commission has expressly stated that the most probative evidence that a

---

[9] Verizon cannot reasonably rely on comparisons to the rates in Pennsylvania, Massachusetts or Connecticut, because those rates were adopted based on a comparison to New York's current rates.

BOC is in compliance with its OSS obligations "is actual commercial usage *in the State for which the BOC seeks 271 authorization*." *Kansas/Oklahoma 271 Order* ¶ 105 (emphasis added).

Verizon, however, has not presented sufficient evidence of commercial usage of OSS in New Jersey to establish that it is providing nondiscriminatory access. For example, although Verizon is required to show that it satisfies its OSS obligations with respect to UNE-based entry, (*Michigan 271 Order* ¶ 133), it cannot do so through commercial usage data, because Verizon's assessment of supra-TELRIC rates for UNEs have precluded meaningful UNE-based activity in the State. *See, e.g.*, Verizon Br. at 79 (acknowledging that only approximately 800 residential lines in the entire State are served through the UNE platform).

Faced with the paucity of UNE-based commercial usage of its OSS, Verizon emphasizes the "perfect score" that it received in KPMG's third-party testing of its OSS. *Id.* at 16, 58. Verizon's "score," however, is irrelevant, because the KPMG testing is entitled to "minimal weight" under the criteria that the Commission has established for third-party OSS testing. *See Pennsylvania 271 Order*, App. C ¶ 31 (stating that third-party testing will be given "minimal weight" if "the review [was] limited in scope or depth or is not independent and blind").

The results of the KPMG testing provide no indication that Verizon is providing nondiscriminatory access to its OSS, because the test was too limited in scope and depth. Kirchberger/Nurse/Kamal Decl. ¶¶ 21-54. Most notably, KPMG did not perform the end-to-end volume testing of the OSS that is essential for a reliable evaluation of how the OSS will perform in the "real world" of actual commercial usage. *Id.* ¶¶ 21-28. Instead, KPMG evaluated each OSS function or "domain" separately, without examining how all of these functions operate on an integrated, seamless basis. *Id.* ¶¶ 26-28. Moreover, KPMG limited its volume testing to the point in the OSS where the local service request confirmation ("LSRC") is issued – excluding the downstream provisioning and billing processes. *Id.* ¶¶ 26-27. Nor did the KPMG volume testing contain any evaluation of Verizon's ability to manually process orders that fail to flow through its systems. *Id.*

The failure of KPMG to conduct the necessary end-to-end testing would constitute a fatal flaw in its testing in any event. But the flaw is even greater here, because Verizon's OSS use a service order processor that is unique to New Jersey, is used in no other State in the Verizon region, and handles orders only for New Jersey. *See id.* ¶ 29; Verizon Br. at 58. The SOP is a critical component – indeed, the "hub" – of the OSS. Kirchberger/Nurse/Fawzi Decl. ¶ 30. *Inter alia*, the SOP edits orders upon their initial submission, routes CLEC orders to the appropriate downstream provisioning systems, routes completed orders to Verizon's billing systems for updating, and instructs Verizon's gateway systems to issue completion notices to CLECs. *Id.* ¶¶ 31-32. Without proper operation of the SOP, a CLEC's order may not be provisioned properly, status notices may not be issued, and/or Verizon's billing systems may not be updated in a timely and accurate manner. *Id.* ¶ 35.

Given the importance and numerous functions of Verizon's SOP – and its uniqueness to New Jersey – KPMG's testing cannot show that the Verizon provides nondiscriminatory access to its OSS. *Id.* ¶ 36. Verizon's assertion that the SOP was "successfully volume-tested" is highly misleading, because the volume testing failed to evaluate the performance of the SOP in the provisioning and billing processes. Thus, Verizon's assertion that the SOP was volume-tested with "region-wide" order volumes is irrelevant. *See id.*; Verizon

Br. at 62; McLean/Wierzbicki/Webster Decl. ¶ 60.[10] Because KPMG did not perform volume testing of the OSS on an end-to-end basis, it did not determine whether the SOP will operate satisfactory in an actual production environment where CLECs will be submitting large volumes of orders on a mass-market basis. In fact, VNJ's own performance data disclose deficiencies in the OSS in the current production environment that KPMG did not find – and that may have resulted from improper performance of the SOP. Kirchberger/Nurse/Kamal Decl. ¶¶ 37-38. For example, for every month from June through November 2001, VNJ has failed to meet the applicable benchmark set for the BPU for the timeliness of billing completion orders (Performance Measurement OR-4-02) and the parity requirement set by the BPU with respect to the Average Duration from Work Completion (SOP) to Bill Completion (Performance Measurement OR-4-06). *Id.* ¶¶ 98-107. Deficiencies such as these, which VNJ's own data reveal, simply confirm that additional data is needed before any conclusion can be made that the SOP works properly when handling order volumes.

[10] The experience of Verizon's OSS in New York demonstrates the need for end-to-end volume testing of the OSS in order for any third-party tester to make a reliable evaluation of OSS performance. As in New Jersey, KPMG confined its volume testing of the New York OSS to the point in the process where the LSRC is issued. Kirchberger/Nurse/Kamal Decl. ¶ 24. Although KPMG's final report on the New York test found that the OSS rendered satisfactory performance and were capable of supporting expected volumes of commercial transactions, the evidence of record before the Commission showed that the OSS in New York – in contrast to the OSS in New Jersey – were already handling large volumes of orders, and thus provided at least some basis for the Commission's conclusion that they could do so in an even greater mass-market environment. Kirchberger/Nurse/Kamal Decl. ¶ 25. However, within months of the Commission's *New York 271 Order* the OSS hemorrhaged in response to ever-increasing volumes of CLEC orders. As a result, CLECs failed to receive massive numbers of acknowledgments, confirmation notices, rejection notices, and completion notices. *See id.*; Order, *Bell Atlantic – New York, Authorization Under Section 271 of the Communications Act to Provide In-Region, InterLATA Service in the State of New York*, File No. EB-00-1H-0085, 15 FCC Rcd. 5413 (2000).

Even leaving aside the lack of end-to-end volume testing, the KPMG test was insufficiently broad in scope. For example, line splitting was outside the scope of the KPMG test. Thus, KPMG made no evaluation of the ability of the OSS to process and provision orders for line splitting, even though Verizon was offering a process for ordering line splitting at the time the testing was being conducted. Kirchberger/Nurse/Kamal Decl. ¶ 43. Because that "two-order" process is inherently unreasonable and discriminatory, it could not have passed muster under any reasonable third-party test. *Id.* ¶¶ 43-44, 47. Although Verizon subsequently implemented a new process for ordering line splitting (which is limited to only certain situations), such implementation occurred after KPMG had completed its testing. *Id.* ¶¶ 45-46. Nor did KPMG evaluate the electronic billing for CLECs that Verizon began offering to CLECs in April 2001, four months before KPMG completed its testing. *Id.* ¶¶ 49-52.

KPMG's testing also was insufficiently blind to render it a reliable measure of a CLEC's real-world experience. Although KPMG made efforts to maximize blindness, Verizon knew the date and times of KPMG's test well in advance. *Id.* ¶¶ 55-57. By contrast, CLECs were substantially limited in their participation in the test. *Id.* ¶¶ 58-59.

Even the limited commercial usage data reported by Verizon show that, contrary to the "clean bill of health" given to Verizon's OSS by KPMG, Verizon's OSS suffer from serious deficiencies that deny CLECs parity of access. For example, fewer than 50 percent of UNE orders flow through Verizon's systems without manual intervention. *Id.* ¶ 65. The high rate of manual fall-out, with its accompanying increased risks of delay and error, put CLECs at a substantial competitive disadvantage, since virtually all of Verizon's retail orders flow through. *Id.* ¶¶ 63-64. Furthermore, although Verizon attempts to compare its flow-through rates favorably with States in its region where Section 271 approval has been granted, the UNE flow-